



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

June 10, 1961

Honorable Burney Walker
District Attorney
McLennan County
Waco, Texas

Opinion No. WW-1076

Re: What constitutes "actual
cash receipts" as such
term is used in Article
3926, V.C.S.?

Dear Mr. Walker:

You have requested an opinion from this department on the construction of Article 3926, V.C.S. You state, "the question to be resolved is determining the scope and definition of 'actual cash receipts.'"

Article 3926, V.C.S., provides in part as follows:

"The County Judge shall also receive the following fees: 1. A commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian."
(Emphasis added).

You have cited several cases which we will discuss in connection with this opinion.

In the case of Lyles v. Oheim, 138 Tex. 333, 159 S.W.2d 102 (1942), the question before the court was whether the commissions to be paid a County Judge under Article 3926, on the receipts of an estate, were to be paid to the County Judge who made the orders and approved the proceedings for the sale of the property belonging to the estate, and who was in office when such estate and its administrator received the receipts derived from such sales, or whether such commissions were to be paid to the County Judge who later acted upon the annual account filed by the administrator of such estate. The point was not raised as to what constitutes "actual cash receipts", but the commission was paid on the full amount of receipts received from the sale of the corpus of the estate and it seems that both parties to the suit as well as the court agreed that this was the proper amount of commissions to be paid.

The term "receipts" does not embrace cash on deposit in the bank at the death of the testator. The term "actual cash receipts" should be held to specifically describe money received by the executor other than the cash or corpus of the estate which was on hand when the testator died. Willis v. Harvey, 26 S.W.2d 288 (Civ.App. 1930, error ref.)

In the case of Goodwin v. Downs, 280 S.W. 512 (Tex. Sup. 1926), the Court held that the County Judge was entitled to a commission on actual cash receipts received by the administrator while completing the road construction contracts of the decedent; and that the time and manner of distribution thereof did not affect his fees, since he received no commission on disbursements.

In McCrary v. Wichita County, 261 S.W.2d 867 (Civ.App. 1953, error ref.), the Court said in effect that the County Judge is not entitled to commissions on the "estate first delivered", and when the ward's sole interest in the corpus of the estate was the right to receive a distributive share of the funds upon liquidation, the "estate first delivered" to the guardian was the distribution made to her by the trustee and the amount so received was not "actual cash receipts" but was the corpus of the estate. If this distribution had been in the form of property other than money and the property had been sold after coming into the hands of the guardian then the proceeds would have been "actual cash receipts" and would have been subject to the commission.

It is our opinion that "actual cash receipts" as used in Article 3926, V.C.S., does not mean the receiving of the corpus of the estate by the executor, administrator or guardian, which includes both real and personal property (including cash), but only means cash received from the sale of the corpus of the estate, or a part thereof, and all moneys received during the course of the administration from rentals, royalties and other revenue derived from the estate received.

S U M M A R Y

Actual cash receipts as used in Article 3926, V.C.S., means cash received during the course of the administration from the sale of the corpus of the estate, or a part thereof and rents, royalties and other revenue derived from the estate and does not include the corpus of the estate

received by the executor, administrator
or guardian, whether same consists of
real or personal property (including
cash).

Yours very truly,

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JHB:jp

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL
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